

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF MONTANA

BILLINGS DIVISION

FILED

BILLINGS DIV.

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PATRICK L. DUNN, CLERK

BY

DEPUTY CLERK

UNITED STATES OF AMERICA,) Cause No. CR 05-36-BLG-RFC
) CV 11-21-BLG-RFC
Plaintiff,)
)
vs.) ORDER DISMISSING PETITION
)
MICKEY L. SITTER,)
)
Defendant.)
)

On March 1, 2011, Defendant Mickey Sitter filed a petition for a writ of error coram nobis. Coram nobis relief is available only to persons who are no longer in custody. Matus-Leva v. United States, 287 F.3d 758, 761 (9th Cir. 2002). On April 14, 2006, Sitter was sentenced in this Court to serve 24 months in prison, to be followed by a three-year term of supervised release. Minutes (doc. 37); Judgment (doc. 38) at 2-3. Sitter is presently incarcerated at Montana State Prison. Although his federal prison term has discharged, he will be placed on federal supervised release when he is released from prison. 18 U.S.C. § 3584(c). Therefore, he is in custody and will remain so for some time. Coram nobis relief is not available to him. Sitter

may wish to file a motion under 28 U.S.C. § 2255, but that is up to him.

A certificate of appealability is not required because this proceeding was not adjudicated under 28 U.S.C. § 2255. 28 U.S.C. § 2253(c)(2). An appeal would not be taken in good faith because Sitter is in custody and this case is squarely controlled by binding precedent.

Accordingly, IT IS HEREBY ORDERED:

1. The petition for writ of coram nobis (doc. 40) is DISMISSED.
2. The Court CERTIFIES, pursuant to Fed. R. App. P. 24(a)(4)(B), that any appeal from this disposition would not be taken in good faith.
3. The Clerk of Court shall enter a judgment of dismissal in Cause No. CV 11-21-BLG-RFC.
4. The Clerk of Court shall include this Court's standard form for § 2255 motions with Sitter's service copy of this Order. If Sitter chooses to file a § 2255 motion, he should ~~complete~~ the form by following its instructions.

DATED this 8 day of March, 2011.


Richard F. Cebull, Chief Judge
United States District Court